

In the Matter of Merchant Mariner's Document No. Z-62379
Issued to: KEDDEH RABAH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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KEDDEH RABAH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 1 August, 1951, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-62379 issued to Keddah Rabah upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as wiper on board the American SS EXMINISTER under authority of the document above described, on or about 26 June, 1951, while said vessel was in the port of New York, he wrongfully had a quantity of hashish in his possession.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified extract from the shipping articles of the EXMINISTER, a certified copy of a U. S. Customs Laboratory Report on the substance found on the person charged and the testimony of Port Patrol Officer Koppel who apprehended Appellant. After the Investigating Officer rested his case, the Examiner ruled that a prima facie case had been made out against Appellant.

In defense, Appellant offered in evidence the testimony of his counsel who was a crew member in the deck department of the EXMINISTER at the time in question. The witness testified as to Appellant's good character and stated that Appellant had never smoked hashish. Appellant testified that after smoking all of his own cigarettes he had found the package containing 6 to 8 cigarettes in the mess hall, smoked them while working on the boilers, and then put the package in his pocket in order to avoid cluttering up the engine room with it. Appellant stated that he forgot about it until the package was discovered by the Customs Officer on the following day.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his

findings and concluded that the charge had been proved by proof of the specification and entered the order revoking Appellant's Merchant Mariner's Document No. Z-62379 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant neither owned nor bought the package of cigarettes; that he found them in the messroom; that he has a clear record for 41 years at sea; and that to revoke his document would deprive him of his only means of livelihood since he is too old at 59 years of age to start pursuing another occupation.

APPEARANCES: Boatswain Theodore P. Chimiklis, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 26 June, 1951, Appellant was serving as wiper on board the American SS EXMINISTER and acting under authority of his Merchant Mariner's Document No. Z-62379 while said vessel was in the Port of New York after having completed a foreign voyage to India.

On this date, Port Patrol Officer Koppel searched Appellant and found a crumpled cigarette package in one of the pockets of Appellant's working clothes. There were no cigarettes in the package but it contained a substance which was in the form of small lumps and powder. Subsequent analysis at the United States Customs Laboratory disclosed that this substance was fourteen grains of hashish mixed with approximately ten percent tobacco. At the time, Appellant told Koppel, upon being questioned, that Appellant had "run short" of cigarettes and had found this package in the messroom; that Appellant had smoked all the cigarettes and then put the package in his pocket.

Appellant had other cigarettes on his person at the time he was searched by Koppel. He also had with him a handkerchief, unused matches, keys, rags and napkins. Although Appellant took everything out of his pockets or pocket (R.8), Koppel did not find any burned matches or cigarette butts (R.6).

OPINION

Hashish is a narcotic prepared from the tops and leaves of the plant Cannabis Sativa which is the source of the more prevalent marijuana. Hence, its detrimental effects are as insidious as other narcotics and all possible means within my authority are utilized to prevent its presence on American merchant vessels.

Appellant disclaims having any knowledge that there was hashish in the otherwise empty cigarette package. He testified that he thought it was loose tobacco which had fallen out of the cigarettes previously in the package. His story is that he was working in the engine room on the night of 25 June preparing the boilers for inspection when he finished smoking all of his cigarettes

and went in search of some more; that he found a package in the messroom and smoked the cigarettes while working and put the butts out before leaving them in a corner to be swept out; and that after smoking the cigarettes he put the package in his pocket because he did not want to throw it in the engine room. This package was the one which was found on his person by the Customs Officer on the following day. Appellant stated that he didn't know the package was in his pocket because he had forgotten about it; and that he "keep everything in my pocket" to avoid throwing "matches or anything" in the engine room (R.8).

I concur with the conclusions reached by the Examiner. Appellant's testimony is inconsistent and incredible for an additional reason than that stated in the opinion of the Examiner that he did not believe Appellant retained possession of the package simply to keep the engine room clean even though he had discarded six or eight cigarette stubs in the engine room. Concerning the latter, Appellant gave a very long and evasive answer when asked specifically why he had thrown the remains of the cigarettes away and not the "empty" package (R.12). He never did give a responsive answer to this question. It also appears that Appellant must have discarded burned matches in the engine room since none of this type were found in his possession at the time of the search although Appellant stated: "I pull everything out from my pocket." (R.8).

The significantly important inconsistency which casts further doubt upon Appellant's testimony is that he repeatedly insisted that he did not discard anything in the engine room (R.8) while also stating that he left the cigarette butts in the corner where he was working (R.12). The latter statement is supported by the fact that no stubs or matches were found on Appellant's person; and, to the same extent, this fact refutes the contention that Appellant did not leave "matches or anything" in the engine room spaces. This bolsters the propriety of doubting Appellant's innocence and leads to the logical conclusion that he retained possession of the package for some reason other than that he did not want to leave it in the engine room. The alternative explanation is that he was aware of the presence of the hashish in the otherwise empty cigarette package and kept the package for this reason.

The testimony of Appellant's counsel and shipmate to the effect that Appellant had never smoked hashish is not persuasive. This witness was a boatswain in the deck department and, consequently, would have had little opportunity to observe Appellant who was in the engineering department.

CONCLUSION

In view of the extremely harmful nature of narcotics, it is considered to be wrongful to knowingly possess any such substance and it is the consistent policy of the Coast Guard to revoke a seaman's documents for this offense. The urgency of this policy, which is brought about by the necessity of protecting other seamen and property, completely overshadows the personal inconveniences it will cause Appellant. Therefore, regardless of his many years of satisfactory service, the order of revocation must be sustained.

ORDER

The order of the Examiner dated 1 August, 1951, should be, and it is, AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 10th day of December, 1951.